

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2393

AN ACT

To repeal sections 135.950 and 135.967, RSMo, and to enact in lieu thereof three new sections relating to enhanced enterprise zones.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 135.950 and 135.967, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as
3 sections 135.950, 135.967, and 135.968, to read as follows:

4 135.950. The following terms, whenever used in sections
5 135.950 to 135.970 mean:

6 (1) "Average wage", the new payroll divided by the number
7 of new jobs;

8 [(1)] (2) "Blighted area", an area which, by reason of the
9 predominance of defective or inadequate street layout, unsanitary
10 or unsafe conditions, deterioration of site improvements,
11 improper subdivision or obsolete platting, or the existence of
12 conditions which endanger life or property by fire and other
13 causes, or any combination of such factors, retards the provision
14 of housing accommodations or constitutes an economic or social

1 liability or a menace to the public health, safety, morals, or
2 welfare in its present condition and use;

3 [(2)] (3) "Board", an enhanced enterprise zone board
4 established pursuant to section 135.957;

5 [(3)] (4) "Commencement of commercial operations" shall be
6 deemed to occur during the first taxable year for which the new
7 business facility is first put into use by the taxpayer in the
8 enhanced business enterprise in which the taxpayer intends to use
9 the new business facility;

10 (5) "County average wage", the average wages in each county
11 as determined by the department for the most recently completed
12 full calendar year. However, if the computed county average wage
13 is above the statewide average wage, the statewide average wage
14 shall be deemed the county average wage for such county for the
15 purpose of determining eligibility. The department shall publish
16 the county average wage for each county at least annually.
17 Notwithstanding the provisions of this subdivision to the
18 contrary, for any taxpayer that in conjunction with their project
19 is relocating employees from a Missouri county with a higher
20 county average wage, such taxpayer shall obtain the endorsement
21 of the governing body of the community from which jobs are being
22 relocated or the county average wage for their project shall be
23 the county average wage for the county from which the employees
24 are being relocated;

25 [(4)] (6) "Department", the department of economic
26 development;

27 [(5)] (7) "Director", the director of the department of
28 economic development;

1 [(6)] (8) "Employee", a person employed by the enhanced
2 business enterprise that is scheduled to work an average of at
3 least one thousand hours per year, and such person at all times
4 has health insurance offered to him or her, which is partially
5 paid for by the employer;

6 [(7)] (9) "Enhanced business enterprise", an industry or
7 one of a cluster of industries that is either:

8 (a) Identified by the department as critical to the state's
9 economic security and growth; or

10 (b) Will have an impact on industry cluster development, as
11 identified by the governing authority in its application for
12 designation of an enhanced enterprise zone and approved by the
13 department; but excluding gambling establishments (NAICS industry
14 group 7132), retail trade (NAICS sectors 44 and 45), educational
15 services (NAICS sector 61), religious organizations (NAICS
16 industry group 8131), public administration (NAICS sector 92),
17 and food and drinking places (NAICS subsector 722), however,
18 notwithstanding provisions of this section to the contrary,
19 headquarters or administrative offices of an otherwise excluded
20 business may qualify for benefits if the offices serve a
21 multistate territory. In the event a national, state, or
22 regional headquarters operation is not the predominant activity
23 of a project facility, the new jobs and investment of such
24 headquarters operation is considered eligible for benefits under
25 this section if the other requirements are satisfied. Service
26 industries may be eligible only if a majority of its annual
27 revenues will be derived from out of the state;

28 [(8)] (10) "Existing business facility", any facility in

1 this state which was employed by the taxpayer claiming the credit
2 in the operation of an enhanced business enterprise immediately
3 prior to an expansion, acquisition, addition, or replacement;

4 [(9)] (11) "Facility", any building used as an enhanced
5 business enterprise located within an enhanced enterprise zone,
6 including the land on which the facility is located and all
7 machinery, equipment, and other real and depreciable tangible
8 personal property acquired for use at and located at or within
9 such facility and used in connection with the operation of such
10 facility;

11 [(10)] (12) "Facility base employment", the greater of the
12 number of employees located at the facility on the date of the
13 notice of intent, or for the twelve-month period prior to the
14 date of the notice of intent, the average number of employees
15 located at the facility, or in the event the project facility has
16 not been in operation for a full twelve-month period, the average
17 number of employees for the number of months the facility has
18 been in operation prior to the date of the notice of intent;

19 [(11)] (13) "Facility base payroll", the total amount of
20 taxable wages paid by the enhanced business enterprise to
21 employees of the enhanced business enterprise located at the
22 facility in the twelve months prior to the notice of intent, not
23 including the payroll of owners of the enhanced business
24 enterprise unless the enhanced business enterprise is
25 participating in an employee stock ownership plan. For the
26 purposes of calculating the benefits under this program, the
27 amount of base payroll shall increase each year based on the
28 consumer price index or other comparable measure, as determined

by the department;

[(12)] (14) "Governing authority", the body holding primary legislative authority over a county or incorporated municipality;

[(13)] (15) "Mega-project", any manufacturing or assembling facility, approved by the department for construction and operation within an enhanced enterprise zone, which satisfies the following:

(a) The new capital investment is projected to exceed three hundred million dollars over a period of eight years from the date of approval by the department;

(b) The number of new jobs is projected to exceed one thousand over a period of eight years beginning on the date of approval by the department;

(c) The average wage of new jobs to be created shall exceed the county average wage;

(d) The taxpayer shall offer health insurance to all new jobs and pay at least eighty percent of such insurance premiums; and

(e) An acceptable plan of repayment, to the state, of the tax credits provided for the mega-project has been provided by the taxpayer;

(16) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

[(14)] (17) "New business facility", a facility that

1 satisfies the following requirements:

2 (a) Such facility is employed by the taxpayer in the
3 operation of an enhanced business enterprise. Such facility
4 shall not be considered a new business facility in the hands of
5 the taxpayer if the taxpayer's only activity with respect to such
6 facility is to lease it to another person or persons. If the
7 taxpayer employs only a portion of such facility in the operation
8 of an enhanced business enterprise, and leases another portion of
9 such facility to another person or persons or does not otherwise
10 use such other portions in the operation of an enhanced business
11 enterprise, the portion employed by the taxpayer in the operation
12 of an enhanced business enterprise shall be considered a new
13 business facility, if the requirements of paragraphs (b), (c),
14 and (d) of this subdivision are satisfied;

15 (b) Such facility is acquired by, or leased to, the
16 taxpayer after December 31, 2004. A facility shall be deemed to
17 have been acquired by, or leased to, the taxpayer after December
18 31, 2004, if the transfer of title to the taxpayer, the transfer
19 of possession pursuant to a binding contract to transfer title to
20 the taxpayer, or the commencement of the term of the lease to the
21 taxpayer occurs after December 31, 2004;

22 (c) If such facility was acquired by the taxpayer from
23 another taxpayer and such facility was employed immediately prior
24 to the acquisition by another taxpayer in the operation of an
25 enhanced business enterprise, the operation of the same or a
26 substantially similar enhanced business enterprise is not
27 continued by the taxpayer at such facility; and

28 (d) Such facility is not a replacement business facility,

as defined in subdivision [(22)] (25) of this section;

[(15)] (18) "New business facility employee", an employee of the taxpayer in the operation of a new business facility during the taxable year for which the credit allowed by section 135.967 is claimed, except that truck drivers and rail and barge vehicle operators and other operators of rolling stock for hire shall not constitute new business facility employees;

[(16)] (19) "New business facility investment", the value of real and depreciable tangible personal property, acquired by the taxpayer as part of the new business facility, which is used by the taxpayer in the operation of the new business facility, during the taxable year for which the credit allowed by 135.967 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles, barge vehicles, aircraft and other rolling stock for hire, track, switches, barges, bridges, tunnels, and rail yards and spurs shall not constitute new business facility investments. The total value of such property during such taxable year shall be:

(a) Its original cost if owned by the taxpayer; or

(b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the new business facility is in operation for less than an entire taxable year, the new business facility investment shall be determined by

1 dividing the sum of the total value of such property on the last
2 business day of each full calendar month during the portion of
3 such taxable year during which the new business facility was in
4 operation by the number of full calendar months during such
5 period;

6 [(17)] (20) "New job", the number of employees located at
7 the facility that exceeds the facility base employment less any
8 decrease in the number of the employees at related facilities
9 below the related facility base employment. No job that was
10 created prior to the date of the notice of intent shall be deemed
11 a new job;

12 [(18)] (21) "Notice of intent", a form developed by the
13 department which is completed by the enhanced business enterprise
14 and submitted to the department which states the enhanced
15 business enterprise's intent to hire new jobs and request
16 benefits under such program;

17 [(19)] (22) "Related facility", a facility operated by the
18 enhanced business enterprise or a related company in this state
19 that is directly related to the operation of the project
20 facility;

21 [(20)] (23) "Related facility base employment", the greater
22 of:

23 (a) The number of employees located at all related
24 facilities on the date of the notice of intent; or

25 (b) For the twelve-month period prior to the date of the
26 notice of intent, the average number of employees located at all
27 related facilities of the enhanced business enterprise or a
28 related company located in this state;

1 [(21)] (24) "Related taxpayer":

2 (a) A corporation, partnership, trust, or association
3 controlled by the taxpayer;

4 (b) An individual, corporation, partnership, trust, or
5 association in control of the taxpayer; or

6 (c) A corporation, partnership, trust or association
7 controlled by an individual, corporation, partnership, trust or
8 association in control of the taxpayer. "Control of a
9 corporation" shall mean ownership, directly or indirectly, of
10 stock possessing at least fifty percent of the total combined
11 voting power of all classes of stock entitled to vote, "control
12 of a partnership or association" shall mean ownership of at least
13 fifty percent of the capital or profits interest in such
14 partnership or association, and "control of a trust" shall mean
15 ownership, directly or indirectly, of at least fifty percent of
16 the beneficial interest in the principal or income of such trust;
17 ownership shall be determined as provided in Section 318 of the
18 Internal Revenue Code of 1986, as amended;

19 [(22)] (25) "Replacement business facility", a facility
20 otherwise described in subdivision [(14)] (17) of this section,
21 hereafter referred to in this subdivision as "new facility",
22 which replaces another facility, hereafter referred to in this
23 subdivision as "old facility", located within the state, which
24 the taxpayer or a related taxpayer previously operated but
25 discontinued operating on or before the close of the first
26 taxable year for which the credit allowed by this section is
27 claimed. A new facility shall be deemed to replace an old
28 facility if the following conditions are met:

1 (a) The old facility was operated by the taxpayer or a
2 related taxpayer during the taxpayer's or related taxpayer's
3 taxable period immediately preceding the taxable year in which
4 commencement of commercial operations occurs at the new facility;
5 and

6 (b) The old facility was employed by the taxpayer or a
7 related taxpayer in the operation of an enhanced business
8 enterprise and the taxpayer continues the operation of the same
9 or substantially similar enhanced business enterprise at the new
10 facility.

11
12 Notwithstanding the preceding provisions of this subdivision, a
13 facility shall not be considered a replacement business facility
14 if the taxpayer's new business facility investment, as computed
15 in subdivision [(16)] (19) of this section, in the new facility
16 during the tax period for which the credits allowed in section
17 135.967 are claimed exceed one million dollars and if the total
18 number of employees at the new facility exceeds the total number
19 of employees at the old facility by at least two;

20 [(23)] (26) "Same or substantially similar enhanced
21 business enterprise", an enhanced business enterprise in which
22 the nature of the products produced or sold, or activities
23 conducted, are similar in character and use or are produced,
24 sold, performed, or conducted in the same or similar manner as in
25 another enhanced business enterprise.

26 135.967. 1. A taxpayer who establishes a new business
27 facility may, upon approval by the department, be allowed a
28 credit, each tax year for up to ten tax years, in an amount

1 determined as set forth in this section, against the tax imposed
2 by chapter 143, RSMo, excluding withholding tax imposed by
3 sections 143.191 to 143.265, RSMo. No taxpayer shall receive
4 multiple ten-year periods for subsequent expansions at the same
5 facility.

6 2. Notwithstanding any provision of law to the contrary,
7 any taxpayer who establishes a new business facility in an
8 enhanced enterprise zone and is awarded state tax credits under
9 this section may not also receive tax credits under sections
10 135.100 to 135.150, sections 135.200 to ~~[135.268]~~ 135.286, or
11 section 135.535, and may not simultaneously receive tax credits
12 under sections 620.1875 to 620.1890, RSMo, at the same facility.

13 3. No credit shall be issued pursuant to this section
14 unless:

15 (1) The number of new business facility employees engaged
16 or maintained in employment at the new business facility for the
17 taxable year for which the credit is claimed equals or exceeds
18 two; and

19 (2) The new business facility investment for the taxable
20 year for which the credit is claimed equals or exceeds one
21 hundred thousand dollars.

22 4. The annual amount of credits allowed for an approved
23 enhanced business enterprise shall be the lesser of:

24 (1) The annual amount authorized by the department for the
25 enhanced business enterprise, which shall be limited to the
26 projected state economic benefit, as determined by the
27 department; or

28 (2) The sum calculated based upon the following:

1 (a) A credit of four hundred dollars for each new business
2 facility employee employed within an enhanced enterprise zone;

3 (b) An additional credit of four hundred dollars for each
4 new business facility employee who is a resident of an enhanced
5 enterprise zone;

6 (c) An additional credit of four hundred dollars for each
7 new business facility employee who is paid by the enhanced
8 business enterprise a wage that exceeds the average wage paid
9 within the county in which the facility is located, as determined
10 by the department; and

11 (d) A credit equal to two percent of new business facility
12 investment within an enhanced enterprise zone.

13 5. Prior to January 1, 2007, in no event shall the
14 department authorize more than four million dollars annually to
15 be issued for all enhanced business enterprises. After December
16 31, 2006, in no event shall the department authorize more than
17 fourteen million dollars annually to be issued for all enhanced
18 business enterprises.

19 6. If a facility, which does not constitute a new business
20 facility, is expanded by the taxpayer, the expansion shall be
21 considered eligible for the credit allowed by this section if:

22 (1) The taxpayer's new business facility investment in the
23 expansion during the tax period in which the credits allowed in
24 this section are claimed exceeds one hundred thousand dollars and
25 if the number of new business facility employees engaged or
26 maintained in employment at the expansion facility for the
27 taxable year for which credit is claimed equals or exceeds two,
28 and the total number of employees at the facility after the

1 expansion is at least two greater than the total number of
2 employees before the expansion; and

3 (2) The taxpayer's investment in the expansion and in the
4 original facility prior to expansion shall be determined in the
5 manner provided in subdivision ~~[(14)]~~ (19) of section 135.950.

6 7. The number of new business facility employees during any
7 taxable year shall be determined by dividing by twelve the sum of
8 the number of individuals employed on the last business day of
9 each month of such taxable year. If the new business facility is
10 in operation for less than the entire taxable year, the number of
11 new business facility employees shall be determined by dividing
12 the sum of the number of individuals employed on the last
13 business day of each full calendar month during the portion of
14 such taxable year during which the new business facility was in
15 operation by the number of full calendar months during such
16 period. For the purpose of computing the credit allowed by this
17 section in the case of a facility which qualifies as a new
18 business facility under subsection 6 of this section, and in the
19 case of a new business facility which satisfies the requirements
20 of paragraph (c) of subdivision ~~[(14)]~~ (17) of section 135.950,
21 or subdivision ~~[(22)]~~ (25) of section 135.950, the number of new
22 business facility employees at such facility shall be reduced by
23 the average number of individuals employed, computed as provided
24 in this subsection, at the facility during the taxable year
25 immediately preceding the taxable year in which such expansion,
26 acquisition, or replacement occurred and shall further be reduced
27 by the number of individuals employed by the taxpayer or related
28 taxpayer that was subsequently transferred to the new business

1 facility from another Missouri facility and for which credits
2 authorized in this section are not being earned, whether such
3 credits are earned because of an expansion, acquisition,
4 relocation, or the establishment of a new facility.

5 8. In the case where a new business facility employee who
6 is a resident of an enhanced enterprise zone for less than a
7 twelve-month period is employed for less than a twelve-month
8 period, the credits allowed by paragraph (b) of subdivision (2)
9 of subsection 4 of this section shall be determined by
10 multiplying four hundred dollars by a fraction, the numerator of
11 which is the number of calendar days during the taxpayer's tax
12 year for which such credits are claimed, in which the employee
13 was a resident of an enhanced enterprise zone, and the
14 denominator of which is three hundred sixty-five.

15 9. For the purpose of computing the credit allowed by this
16 section in the case of a facility which qualifies as a new
17 business facility pursuant to subsection 6 of this section, and
18 in the case of a new business facility which satisfies the
19 requirements of paragraph (c) of subdivision ~~[(14)]~~ (17) of
20 section 135.950 or subdivision ~~[(22)]~~ (25) of section 135.950,
21 the amount of the taxpayer's new business facility investment in
22 such facility shall be reduced by the average amount, computed as
23 provided in subdivision ~~[(14)]~~ (19) of section 135.950 for new
24 business facility investment, of the investment of the taxpayer,
25 or related taxpayer immediately preceding such expansion or
26 replacement or at the time of acquisition. Furthermore, the
27 amount of the taxpayer's new business facility investment shall
28 also be reduced by the amount of investment employed by the

1 taxpayer or related taxpayer which was subsequently transferred
2 to the new business facility from another Missouri facility and
3 for which credits authorized in this section are not being
4 earned, whether such credits are earned because of an expansion,
5 acquisition, relocation, or the establishment of a new facility.

6 10. For a taxpayer with flow-through tax treatment to its
7 members, partners, or shareholders, the credit shall be allowed
8 to members, partners, or shareholders in proportion to their
9 share of ownership on the last day of the taxpayer's tax period.

10 11. Credits may not be carried forward but shall be claimed
11 for the taxable year during which commencement of commercial
12 operations occurs at such new business facility, and for each of
13 the nine succeeding taxable years for which the credit is issued.

14 12. Certificates of tax credit authorized by this section
15 may be transferred, sold, or assigned by filing a notarized
16 endorsement thereof with the department that names the
17 transferee, the amount of tax credit transferred, and the value
18 received for the credit, as well as any other information
19 reasonably requested by the department. The sale price cannot be
20 less than seventy-five percent of the par value of such credits.

21 13. The director of revenue shall issue a refund to the
22 taxpayer to the extent that the amount of credits allowed in this
23 section exceeds the amount of the taxpayer's income tax.

24 14. Prior to the issuance of tax credits, the department
25 shall verify through the department of revenue, or any other
26 state department, that the tax credit applicant does not owe any
27 delinquent income, sales, or use tax or interest or penalties on
28 such taxes, or any delinquent fees or assessments levied by any

1 state department and through the department of insurance that the
2 applicant does not owe any delinquent insurance taxes. Such
3 delinquency shall not affect the authorization of the application
4 for such tax credits, except that the amount of credits issued
5 shall be reduced by the applicant's tax delinquency. If the
6 department of revenue or the department of insurance, or any
7 other state department, concludes that a taxpayer is delinquent
8 after June fifteenth but before July first of any year and the
9 application of tax credits to such delinquency causes a tax
10 deficiency on behalf of the taxpayer to arise, then the taxpayer
11 shall be granted thirty days to satisfy the deficiency in which
12 interest, penalties, and additions to tax shall be tolled. After
13 applying all available credits toward a tax delinquency, the
14 administering agency shall notify the appropriate department, and
15 that department shall update the amount of outstanding delinquent
16 tax owed by the applicant. If any credits remain after
17 satisfying all insurance, income, sales, and use tax
18 delinquencies, the remaining credits shall be issued to the
19 applicant, subject to the restrictions of other provisions of
20 law.

21 135.968. 1. A taxpayer who establishes a mega-project,
22 approved by the department, within an enhanced enterprise zone
23 shall, in exchange for the consideration provided by new tax
24 revenues and other economic stimuli that will be generated from
25 the new jobs created by the mega-project, be allowed an income
26 tax credit equal to the percentage of actual new annual payroll
27 of the taxpayer attributable to employees directly related to the
28 manufacturing and assembly process and administration, as

1 provided under subsection 4 of this section. A taxpayer seeking
2 approval of a mega-project shall submit an application to the
3 department. The department shall not approve any mega-project
4 after December 31, 2008. The department shall not approve any
5 credits for mega-projects to be issued prior to January 1, 2013,
6 and in no event shall the department authorize more than forty
7 million dollars to be issued annually for all mega-projects. The
8 total amount of credits issued under this section shall not
9 exceed two hundred forty million dollars.

10 2. In considering applications for approval of mega-
11 projects, the department may approve an application if:

12 (1) The taxpayer's project is financially sound and the
13 taxpayer has adequately demonstrated an ability to successfully
14 undertake and complete the mega-project. This determination
15 shall be supported by a professional third party market
16 feasibility analysis conducted on behalf of the state by a firm
17 with direct experience with the industry of the proposed
18 mega-project, and by a professional third party financial
19 analysis of the taxpayer's ability to complete the project;

20 (2) The taxpayer's plan of repayment to the state of the
21 amount of tax credits provided is reasonable and sound;

22 (3) The taxpayer's mega-project will create new jobs that
23 were not jobs previously performed by employees of the taxpayer
24 or a related taxpayer in Missouri;

25 (4) Local taxing entities are providing a significant level
26 of incentives for the mega-project relative to the projected new
27 local tax revenues created by the mega-project;

28 (5) There is at least one other state or foreign country

1 that the taxpayer verifies is being considered for the project,
2 and receiving mega-project tax credits is a major factor in the
3 taxpayer's decision to go forward with the project and not
4 receiving the credit will result in the taxpayer not creating new
5 jobs in Missouri;

6 (6) The mega-project will be located in an enhanced
7 enterprise zone which constitutes an economic or social liability
8 and a detriment to the public health, safety, morals, or welfare
9 in its present condition and use;

10 (7) The completion of the mega-project will serve an
11 essential public municipal purpose by creating a substantial
12 number of new jobs for citizens, increasing their purchasing
13 power, improving their living conditions, and relieving the
14 demand for unemployment and welfare assistance thereby promoting
15 the economic development of the enhanced enterprise zone, the
16 municipality, and the state; and

17 (8) The creation of new jobs will assist the state in
18 providing the services needed to protect the health, safety, and
19 social and economic well-being of the citizens of the state.

20 3. Prior to final approval of an application, a binding
21 contract shall be executed between the taxpayer and the
22 department of economic development which shall include, but not
23 be limited to:

24 (1) A repayment plan providing for cash payment to the
25 state general revenue fund which shall result in a positive
26 internal rate of return to the state and fully comply with the
27 provisions of the World Trade Organization Agreement on Subsidies
28 and Countervailing Measures. The rate of return shall be

1 commercially reasonable and, over the life of the project, exceed
2 one hundred and fifty percent of the state's borrowing costs
3 based on the AAA-rated twenty-year tax exempt bond rate average
4 over a twenty-year borrowing period. The rate shall be verified
5 by a professional third-party financial analysis;

6 (2) The taxpayer's obligation to construct a facility of at
7 least one million square feet within five years from the date of
8 approval;

9 (3) A requirement that the issuance of tax credits
10 authorized under this section shall cease and the taxpayer shall
11 immediately submit payment, to the state general revenue fund, in
12 an amount equal to all credits previously issued less any amounts
13 previously repaid, increased by an additional amount that shall
14 provide the state a reasonable rate of return, in the event the
15 taxpayer:

16 (a) Fails to construct a facility of at least one million
17 square feet within five years of the date of approval;

18 (b) Fails to make a scheduled payment as required by the
19 repayment plan; or

20 (c) Fails to compensate new jobs at rate equal to or in
21 excess of the county average wage or fails to offer health
22 insurance to all such new jobs and pay at least eighty percent of
23 such premiums; and

24 (4) A requirement that the department shall suspend
25 issuance of tax credits authorized under this section if, at any
26 point, the total amount of tax credits issued less the total
27 amount of repayments received equals one hundred and fifty-five
28 million dollars.

1 4. Upon approval of an application by the department, tax
2 credits shall be issued annually for a period not to exceed eight
3 years from the commencement of commercial operations of the mega-
4 project. The eight-year period for the issuance of mega-project
5 tax credits may extend beyond the expiration of the enhanced
6 enterprise zone. The maximum percentage of the annual payroll of
7 the taxpayer for new jobs located at the mega-project which may
8 be approved or issued by the department for tax credits shall not
9 exceed:

10 (1) Eighty percent for the first three years that tax
11 credits will be issued for the mega-project;

12 (2) Sixty percent for the next two subsequent years;

13 (3) Fifty percent for the next two subsequent years; and

14 (4) Thirty percent for the remaining year.

15
16 In no event shall the department issue more than forty million
17 dollars annually in mega-project tax credits to any taxpayer. In
18 any given year, the amount of tax credits issued shall be the
19 lesser of forty million dollars, the applicable annual payroll
20 percentage, or the amount of tax credits remaining unissued under
21 the two hundred and forty million dollar limitation on mega-
22 project tax credit issuance provided under subsection 1 of this
23 section.

24 5. Tax credits issued under this section may be claimed
25 against the tax imposed by chapter 143, RSMo, excluding
26 withholding tax imposed by sections 143.191 to 143.265, RSMo.
27 For taxpayers with flow-through tax treatment of its members,
28 partners, or shareholders, the credit shall be allowed to

1 members, partners, or shareholders in proportion to their share
2 of ownership on the last day of the taxpayer's tax period. The
3 director of revenue shall issue a refund to a taxpayer to the
4 extent the amount of credits allowed in this section exceeds the
5 amount of the taxpayer's income tax liability in the year
6 redemption is authorized. An owner of tax credits issued under
7 this section shall not be required to have any Missouri income
8 tax liability in order to redeem such tax credits and receive a
9 refund. The director of revenue shall prepare a form to permit
10 the owner of such tax credits to obtain a refund.

11 6. Certificates of tax credits authorized under this
12 section may be transferred, sold, or assigned by filing a
13 notarized endorsement thereof with the department that names the
14 transferee, the amount of tax credit transferred, and the value
15 received for the credit, as well as any other information
16 reasonably requested by the department. Upon such transfer,
17 sale, or assignment, the transferee shall be the owner of such
18 tax credits entitled to claim the tax credits or any refunds with
19 respect thereto issued to the taxpayer. Tax credits may not be
20 carried forward past the year of issuance. Tax credits
21 authorized by this section may not be pledged or used to secure
22 any bonds or other indebtedness issued by the state or any
23 political subdivision of the state. Once such tax credits have
24 been issued, nothing shall prohibit the owner of the tax credits
25 from pledging the tax credits to any lender or other third-party.

26 7. Any taxpayer issued tax credits under this section shall
27 provide an annual report to the department of the number of new
28 jobs located at the mega-project, the new annual payroll of such

1 new jobs, and such other information as may be required by the
2 department to document the basis for benefits under this section.
3 The department may withhold the approval of the annual issuance
4 of any tax credits until it is satisfied that proper
5 documentation has been provided, and shall reduce the tax credits
6 to reflect any reduction in new payroll. If the department
7 determines the average wage is below the county average wage, or
8 the taxpayer has not maintained employee health insurance as
9 required, the taxpayer shall not receive tax credits for that
10 year.

11 8. Notwithstanding any provision of law to the contrary,
12 any taxpayer who is awarded tax credits under this section shall
13 not also receive tax credits under sections 135.100 to 135.150,
14 sections 135.200 to 135.286, section 135.535, or sections
15 620.1875 to 620.1890, RSMo.

16 9. Any action brought in any court contesting the approval
17 of a mega-project and the issuance of the tax credits, or any
18 other action undertaken pursuant to this section related to such
19 mega-project, shall be filed within ninety days following
20 approval of the mega-project by the department.

21 10. Records and documents relating to a proposed
22 mega-project shall be deemed closed records until such time as
23 the application has been approved. Provisions of this subsection
24 to the contrary notwithstanding, records containing business plan
25 information which may endanger the competitiveness of the
26 business shall remain closed.